IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 12136 of 2004(T)

PETITIONER:

K. PONNAPPAN PILLAI, EXECUTIVE ENGINEER (RETD.) K.S.E.BOARD, KOTHAMANGALAM RESIDING AT "SREELAYAM", KOOTTIKKADA P.O., THATTAMALA, KOLLAM-691 020.

BY ADV. SRI.C.P.SUDHAKARA PRASAD
SRI.ELVIN PETER P.J.
SRI.S.RAMESH
SRI.P.N.SANTHOSH
SRI.NAVEEN.T

RESPONDENTS:
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1. THE CHIARMAN, KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER (H.R.M.), K.S.E.BOARD, VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.K.S.ANIL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.12136/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF ORDER B.O.NO.CI/4766/82 DATED 26.4.1982 ISSUED BY THE KSE BOARD.

EXT.P2: TRUE COPY OF ORDER, G.O.(P) NO.274/70/FIN. DATED 29TH APRIL, 1970 ISSUED BY THE GOVT.

EXT.P3: TRUE COPY OF ORDER NO.EBC.II/6277/82 DATED 23.7.1986 ISSUED BY THE KSE BOARD.

EXT.P4: TRUE COPY OF REPRESENTATIOND ATED 5.2.2003 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P5: TRUE COPY OF REPRESENTATION DATED 20.12.2003 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P6: TRUE COPY OF JUDGMENT DATED 21.2.1990 IN CIVIL APPEAL NO.1257/1990 OF THE HON'BLE SUPREME COURT.

EXT.P7: TRUE COPY OF JUDGMENT DATED 7TH JANUARY, 2004 IN WP (C) NO.494/2004 OF THIS HON'BLE COURT.

EXT.P8: TRUE COPY OF ORDER NO.LAS.I/484/2004 W.P(C) NO.494/2004 DATED 20.3.2004 ISSUED BY THE 1ST RESPONDENT.

EXT.P9: TRUE COPY OF ORDER NO.LAS.1/484/2004 W.P(C) NO.494/2004 DATED 26.05.2004 ISSUED BY THE 1ST RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE

P.R.RAMAN, J.

W.P.(C) NO. 12136 OF 2004

Dated this the 23rd day of January, 2007

J U D G M E N T

Petitioner was sanctioned leave without allowance for going abroad as per Exhibit P1 order passed by the Board. He went abroad, returned, rejoined duty and retired thereafter. According to him, the period of leave without allowances should also be reckoned with for the purpose of pensionary benefits. According to him the Board considered his grievances and by Exhibit P8 order rejected his claim which is under challenge.

2. Admittedly, the petitioner was sanctioned leave without allowance as per Board order No.C1/4766/82 dated 26/4/82. One of the conditions in the said order is that "leave period will not count for increment and pension". Petitioner accepted the conditions contained in Exhibit P1 and availed the benefit thereunder. No rule, notification or order contrary to the conditions imposed are produced now to press the claim made in the writ petition.

3. According to the petitioner, Exhibit P2 Government order has not been adopted by the Board. Board has rightly said

in Exhibit P8 that even without the adoption, the petitioner is bound by the condition laid down by the Board granting him leave. A Government order is not automatically binding on the Board. Board is an autonomous body. It can certainly adopt the Government order. But even before adopting the Government order, the Board has already imposed a condition in Exhibit P1. As such the petitioner is bound by the conditions contained in Exhibit P1. However, even as per Appendix XII A of Kerala Service Rules adopted by the Board and as per note below Rule 10, it clearly states that "those who have proceeded on leave without allowances for taking up employment abroad or within the country before the commencement of the rules will continue to be governed by the condition laid down in G.O(P) No.274/70/Fin. dated 29.04.1970 even if the leave extends beyond 16.12.1983." Therefore even as per G.O(P) No.274/70/Fin., the petitioner will not be entitled for counting the period of leave without allowances for the purpose of pension. Thus looking the matter from any angle, the rejection of claim for counting the period of leave for the purpose of pensionary benefits as per Exhibit P8 does not call for any interference. The view taken in Exhibit P8 that the

petitioner is not entitled to count the period of leave without allowances for the purpose of pensionary benefit is strictly in compliance with Exhibit P1 condition, based on which the petitioner availed the benefit.

In the circumstances, the writ petition is devoid of any merit and the same is dismissed.

P.R.RAMAN, JUDGE

Rp